

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 3:11-CV-30171  
MAP

**IMEDICOR, INC. FKA VEMICS, INC.,  
Plaintiff**

VS.

MASSACHUSETTS MUTUAL LIFE  
INSURANCE COMPANY,  
Defendant

## PLAINTIFF'S MOTION TO DISMISS COUNTERCLAIM

Now comes Plaintiff, “Vemics” and moves this court to dismiss the counterclaim of the Defendant, “Mass. Mutual”.

## I. STATEMENT OF FACTS

- A. Count I of the counterclaim admits the parties. *See Defendant's Counterclaims*, ¶¶ 1 - 2.
- B. Count I of the counterclaim admits the contract between the parties (hereafter the "Contract"). *See Defendant's Counterclaims*, ¶ 4.
- C. Mass. Mutual paid Vemics more than \$490,850.00 on the Contract. *See Defendant's Counterclaims*, ¶ 5.
- D. The counterclaim alleges that Vemics caused significant damages to Mass. Mutual. *See Defendant's Counterclaims*, ¶¶ 6 - 7.
- E. The Contract was signed December 22, 2006, and called for annual renewals thereafter *See Complaint*, Exhibit B-1.

## II. ARGUMENT

- A. Count I of the counterclaim must be dismissed under Fed.R.Civ. Pro. Rule 12 b(6) for failure to state a claim.
- B. The Contract between the parties called for Vemics to provide to Mass. Mutual its Live Access video conferencing with a 130 seat license, annual help desk support, hosting services, related software and some hardware for telecommunications.